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COMMISSION ON HUMAN RIGHTS
Fifty-third session
Agenda item 10

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by Worldview International Foundation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[13 March 1997]

1. The situation of human rights in Tibet has been discussed by the United Nations Commission on Human Rights and other United Nations bodies for many years. However, in recent years, except for the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities the United Nations human rights system, notably the Commission on Human Rights, has failed to censure China. This is very regrettable because all countries, irrespective of their power, should be scrutinized when they repeatedly disregard international standards and norms on human rights.

2. Worldview International Foundation submits this written statement in earnest hope that the United Nations human rights mechanisms, particularly the Commission on Human Rights, will genuinely consider the situation in Tibet at the current session. Such action by the United Nations is crucial due to the nature and persistent patterns of human rights violations in Tibet. As the Dalai Lama told the European Parliament in Strasbourg on 23 October 1996:

"Violations of human rights in Tibet have a distinct character. Such abuses are aimed at Tibetans as a people from asserting their own identity and their wish to preserve it. Thus, human rights violations in Tibet are often the result of institutionalized racial and cultural discrimination. If the human rights situation in Tibet is to be improved, the issue of Tibet should be addressed on its own merits."

3. During the past year, our organization has received numerous reports on the worsening situation of human rights in Tibet. Cases of arbitrary detention, disappearance, custodial death, summary execution, torture and unfair trial have increased while the Tibetan people continue to be denied their basic rights, such as freedom of speech, assembly, religion and movement. The continued incommunicado detention of Gedhun Choekyi Nyima, the eleventh Panchen Lama of Tibet, is one example. The summary execution of 34 Tibetans in Tibet in 1996 in the name of the "Strike Hard" campaign and the sentencing of Ngawang Choephel, a Tibetan musician, to 18 years in prison for so-called "spying" are other indications.

4. Political and religious repression have intensified in Tibet during the past few years, particularly in 1995 and 1996. A Tibetan NGO based in India reported that in 1996 204 known arrests took place in Tibet; 1,018 (265 females and 50 under the age of 18) identified Tibetan prisoners remained in prisons; 12 cases of disappearance was known to have occurred; 8 Tibetan political prisoners died as a result of torture and ill-treatment, including 3 custodial deaths; and 1,295 monks were expelled. 1/

5. Political arrests in 1996 have resulted from various campaigns launched in Tibet in early 1996 by the Chinese authorities. For example, as many as 110 arrests resulted from the "Strike Hard" campaign under which were conducted "Patriotic Re-education" sessions in monasteries and nunneries. In mid-March 1996, 25 students of Ngarik Kyitselling school were detained in Kumbum in north-eastern Tibet after posters calling for Tibetan independence appeared at Kumbum monastery.

6. The denial of human rights and fundamental freedoms in Tibet have been strengthened by China's refusal to allow international human rights organizations to gain independent access to the country. Furthermore, monitoring and gathering facts on human rights violations face severe problems as China considers all information that pertains to the current situation in Tibet as "leaking State secrets". For example, last year, a New Zealand tourist was detained, interrogated and forced to make a confession after sending a fax to New Zealand that included a reference to what he thought might be a bomb explosion in Lhasa. 2/

7. In recent times, the Chinese authorities continued to carry out policies to deny economic, social and cultural rights to the Tibetan people. One clear example here is the attempt by the authorities to create further obstacles to the study of the Tibetan language. In 1996, a decision was taken in the so-called "Tibet Autonomous Region" to close a highly successful project in three secondary schools where Tibetan children were being taught in their own language instead of Chinese. At Tibet University in Lhasa, for example, all except 1 of the University's 17 courses are now believed to be taught in

Chinese, and although scholars have prepared textbooks in Tibet for primary and secondary schools, work on tertiary-level textbooks has met with funding and bureaucratic difficulties. 3/ The University was established in 1985 to increase the study of the Tibetan language.

8. In north-eastern Tibet, a Tibetan literary magazine was banned in early 1996 because one of the pages said: "We have compiled this in memory of our ancestors, who have written their history in blood so that progress might be made in our literature. We have written this out of our love for the snow mountains". This magazine was published by students of Ngarik Kyitselling school at Kumbum monastery. After detentions, the whereabouts of Damchoe Gyatso, aged 27, the principal editor of this magazine, remained unknown in August 1996.

9. The situation of the implementation of Chinese settlers in Tibet and the policy of coerced birth control on Tibetan women are directly threatening the very survival of the religious, cultural and national identity of the Tibetan people. It was, therefore, alarming that some 500,000 Chinese were to be moved into Tibet to work in copper mines and that the Chinese authorities planned to build several mining towns to house about 100,000 migrant workers. 4/

10. During the Third Work Forum on Tibet held in Beijing in July 1994, the Chinese authorities publicly admitted a policy of population transfer in Tibet. It was officially stated that former soldiers, paramilitary troops, cadres, technicians and entrepreneurs from China were to be encouraged to move to Tibet through incentives provided by the Government. It had been previously stated in a leaked report of a top-secret meeting held near Chengdu on 12 May 1993 that strategies would be adopted to "flood" Tibet with more Chinese settlers.

11. The increase in Chinese settlements in Tibet creates new tensions between the Tibetans and the settlers. The social life of the Tibetans, particularly in major towns, has been assaulted by prostitution, cheap liquor, karaoke bars, pool tables, discos and Chinese music and movies. Unemployment among Tibetan youths is on the rise. On the economic front, opportunities are being snatched by Chinese settlers who have more connections and capital. Even after more than four decades of "peaceful liberation" Tibet under China has not been able to produce capable Tibetan professionals and experts. The region remains amongst the poorest in the world.

12. In a statement issued on 20 February 1997, after the demise of Mr. Deng Xiaoping, the Dalai Lama remarked: "Following Mr. Deng Xiaoping's statement in 1979, that apart from the question of total independence of Tibet all other issues could be discussed and resolved, I was hopeful that the issue of Tibet would be resolved during his lifetime. Encouraged by the overall changes in China and the new pragmatic attitude towards the issue of Tibet, I have, since then, consistently and sincerely made attempts to engage the Chinese Government in earnest negotiations over the future of Tibet. Sadly, the Chinese Government has not responded positively to my proposals and initiatives over the past 18 years for negotiated resolution within the framework stated by Mr. Deng Xiaoping. On my part, as soon as we receive a positive indication from Beijing I am ready to enter into negotiations anytime

and anywhere without preconditions." It is, therefore, evident that the international community should pay greater attention to Tibet and encourage China that it is in its best interest to resolve the Tibetan question.

13. In conclusion, Worldview International Foundation urges the United Nations Commission on Human Rights to adopt a strong resolution on China in view of the gross and systematic violations of human rights in Tibet. The adoption of such a resolution, we believe, will be the best approach to convey a positive message to all the unfortunate victims of China. And such a message will give hope to defenders of human rights, justice and democracy in this world.

Notes

1/ Tibet: One More Year of Political Repression - 1966 Annual Report - Human Rights Violations in Tibet, Tibetan Centre for Human Rights and Democracy, Dharamsala, India, February 1997.

2/ United States Department of State, Human Rights Country Report, 30 January 1997.

3/ "Students' unease at language policies in schools, university", Tibet Information Network, 31 December 1996.

4/ South China Morning Post, Hong Kong, April 1996.

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COMMISSION ON HUMAN RIGHTS
Fifty-third session
Agenda item 13

IMPLEMENTATION OF THE PROGRAMME OF ACTION FOR THE THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION

Written statement submitted by Human Rights Advocates, Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[14 March 1997]

1. Human Rights Advocates (HRA) supports and encourages the work of the Commission on Human Rights and of the Special Rapporteur, Maurice Glèlè-Ahanhanzo, in investigating and reporting on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. HRA recommends continued cooperation with countries to investigate contemporary forms of racial discrimination and facilitate the application of international legal standards to combat racism.

2. The Commission and the Special Rapporteur have emphasized that the international community is facing not only institutionalized forms of racial discrimination, such as official doctrines of racial superiority or exclusivity, but also "new" and indirect forms, which are often disguised by a proclamation of theoretical equality for all communities. 1/ The Commission recognizes that countries around the world, and developed countries in particular, are facing new forms of racial discrimination. Although many developed countries have passed legislation prohibiting various forms of institutionalized racial discrimination and ratified the International Convention on the Elimination of All Forms of Racial

Discrimination, it is important to evaluate the effectiveness of such legislation and to compare domestic legal standards with international legal standards such as those set forth in that Convention. 2/ Further, given the persistence of racism in certain countries, it is necessary to investigate indirect forms of racial discrimination in order to combat racism and all of its manifestations.

3. The mission of the Special Rapporteur to the United States of America, the Special Rapporteur's report, 3/ and his recommendations to the Government of the United States provide lessons for the Commission in implementing the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination. In a statement to the Commission, the United States emphasized the legal measures implemented to fight discrimination. 4/ While legislation is necessary and an important factor in evaluating the situation in various countries, the Commission must look further and investigate the impact of legislation and consider how accessible legal remedies are for victims of discrimination. Further, the Commission and member States must consider the impact of legislation and policies that may have an "indirect" or disproportionate discriminatory impact on racial minorities.

4. There are several areas of special concern which illustrate the need for further efforts to combat racial discrimination and to evaluate the effectiveness, or lack thereof, of existing legislation and policies. An analysis of these areas and the United States response to concerns raised by the Special Rapporteur highlight the need for more cooperation in forming new strategies to combat racial discrimination. There have been no signs that the United States has planned to implement the recommendations of the Special Rapporteur, nor has there been a published response to the specific concerns noted in the Special Rapporteur's report. The following two areas of concern in the United States reflect discrepancies between domestic legal standards and international legal standards of non-discrimination. The problems highlighted reflect problems that are generally applicable to other developed countries and provide a framework for analysis of domestic legal standards in other countries.

Environmental racism

5. Environmental racism is an area of increasing national and international concern. While the Clinton administration has recognized the problem, the United States response to the Special Rapporteur's report fails to address the concerns regarding the discriminatory impact of environmental pollution and degradation on racial minorities. Studies have found race to be the most significant among variables tested in association with the location of commercial hazardous waste facilities, representing a consistent national pattern in the United States. 5/ The United States Environmental Protection Agency and the Agency for Toxic Substances and Disease Registry have also documented higher levels of toxic contamination in African-American communities. 6/ Decisions about the location of toxic waste dumps and other decisions which have an environmental impact are highly political in nature. Minority access to decision-making and accountability by those in authority for racial discrimination are important areas where further efforts are needed to bring about environmental justice.

6. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution could be a tool for environmental justice, but, under current federal case law, does not offer adequate protection for racial minorities. The United States Supreme Court held that a race-neutral government action does not violate the Equal Protection Clause unless the plaintiff can prove discriminatory intent. 7/ This creates a heavy burden for environmental justice advocates and other civil rights advocates, despite evidence of disproportionate impact and lack of access to environmental decision-making. The required showing of discriminatory intent is inconsistent with international legal standards under the International Convention on the Elimination of All Forms of Racial Discrimination defining racial discrimination as action that has the purpose or effect of denying fundamental freedoms to minorities. 8/

Criminal justice system and the application of the death penalty

7. Racism in the criminal justice system is prevalent at every stage of the process. A government study found racial disparities in the charging, sentencing and imposition of the death penalty. 9/ These racial disparities in death penalty sentencing, the trend towards increasing use of the death penalty in the United States 10/ and the United States Supreme Court's decision upholding the constitutionality of the imposition of the death penalty for those who had committed crimes when 16 or 17 years old, 11/ reflect the need for the application of international legal standards in domestic courts.

8. Racial discrimination and racism found at earlier stages of the judicial process and at early stages of arrest and detention have a profound impact on sentencing. Race-neutral sentencing guidelines still have discriminatory impacts on minorities because they do not take into account racial discrimination at these earlier stages. Further, the failure of United States courts to recognize and effectively address racial discrimination in the criminal justice system, despite evidence of stark racial disparities, 12/ illustrates the need for application of international standards and the rejection of the requirement of proof of intent for policies which have discriminatory impacts on minorities.

Conclusion and recommendations

9. Many countries, including developed countries, have passed legislation prohibiting intentional racial discrimination. However, indirect contemporary forms of racism often derive from hidden processes and are less likely to provide direct evidence of discriminatory intent. International legal standards broadly define racial discrimination and the Commission is dedicated to combating all forms of racial discrimination. The application of international standards in domestic courts may provide a basis for evaluating domestic policies of non-discrimination.

10. HRA recommends that the Commission continue to focus on contemporary forms of racial discrimination in the United States, France, Germany and the United Kingdom, and to urge these countries to respond to the concerns noted by the Special Rapporteur in a continuing dialogue about the effectiveness of governmental responses to racial discrimination and new strategies for the

Implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination. For the work of the Special Rapporteur to be effective, people must be publicly informed of the dialogue between the Governments and the Special Rapporteur. 13/

11. HRA recommends that the compatibility of international legal standards of non-discrimination be considered in reviewing the mission to the United States at its fifty-fourth session in 1998 and urge the United States to comply with the reporting requirements of the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by the United States in 1994. The Committee should review submissions of the United States with reference to international legal standards of non-discrimination.

12. HRA recommends that the Special Rapporteur compare the domestic legal standards of countries where racism is on the rise with international legal standards, which do not require a showing of intent for racial discrimination, in future missions.

Notes

1/ Commission on Human Rights, fiftieth session, agenda item 14, E/CN.4/1994/66. (Considerations on the mandate of the Special Rapporteur).

2/ See article I, International Convention on the Elimination of All Forms of Racial Discrimination, (1969) 660 UNTS 195,216. (CERD defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life."). See also, Anne F. Bayefsky, The Principle of Equality or Non-Discrimination in International Law, 11, H.R.L.J. 1 (1990).

3/ Report by Mr. Maurice Glèlè-Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to the United States of America, Commission on Human Rights, fifty-first session, item 16, E/CN.4/1995/78/Add.1.

4/ See Note by the Secretary-General, General Assembly, fiftieth session, agenda item 103, A/50/476, para. 19, 25 September 1995.

5/ Commission for Racial Justice of the United Church of Christ, Toxic Waste and Race in the United States, (1987). See also, United States General Accounting Office, Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities (1983).

6/ United States Environmental Protection Agency, Environmental Equity: Reducing Risk for All Communities, vol. 2: Supporting Document, (1992); Center for Disease Control, Agency for Toxic Substances and Disease Registry, "The Nature and Extent of Lead Poisoning in Children in the United States: A Report to Congress (1988)".

7/ Village of Arlington Heights v. Metropolitan Development Housing Corp., 429 U.S. 252 (1977).

8/ See note 2, above.

9/ United States General Accounting Office, "Death penalty sentencing, research indicates pattern of racial disparities", Report to the Senate and House Committees on the Judiciary (1990).

10/ In April 1995, the laws of 38 States made provisions for the death penalty, and the number of executions increased twenty-fold in the past decade. Death Penalty Information Center, "Facts about the death penalty" (14 December 1995).

11/ Stanford v. Kentucky, 492 U.S. 361 (1989). Article 6, paragraph 5, of the International Covenant on Civil and Political Rights prohibits imposition of the death penalty for crimes committed by persons below 18 years of age.

12/ See McClesky v. Klemp, 481 U.S. 2799 (1987).

13/ See report by Maurice Glèlè-Ahanhanzo, Commission on Human Rights, fifty-third session, agenda item 13, E/CN.4/1997/71, para. 19. (Despite the Special Rapporteur's intention to make observations on the United States comments on the Special Rapporteur's report, the comments have not been publicized due to United States concerns.)

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Fifty-third session
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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted by the Transnational Radical Party, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[7 March 1997]

1. At its fifty-second session the United Nations Commission on Human Rights adopted resolution 1996/6 in which it decided to follow the developments of the situation in Western Sahara and to consider the question at its fifty-third session under item 7 of the provisional agenda as a matter of high priority. This organization considers this issue to be one of the greatest importance. In fact, during the fifty-second session of the Commission, the Transnational Radical Party joined other organizations in a major conference at the Palais des Nations on the question of self-determination, and specifically on the cases of Western Sahara, East Timor and Tibet. This conference was organized in cooperation with the National Council of Maubere Resistance, the Tibetan government in exile, the Polisario Front and the Unrepresented Nations and Peoples Organization.

2. The outcome of the conference referred to above, contained in a report, "The question of self-determination: The cases of East Timor, Tibet and Western Sahara" (25-26 March 1996) could be useful to the debate of the Commission. The conference examined the basis and meaning of the right to self-determination as it applies specifically to these three concrete situations. It explored the relationship between human rights violations and

self-determination, and assessed the impact of population transfer policies on the exercise of self-determination. It also looked at the proposals and prospects for responding to the claims for self-determination of East Timor, Tibet and Western Sahara and for resolving the conflicts that exist in those areas today. Participants included 1996 Nobel laureate Jose Ramos Horta, Mr. J.M. Mukhi, former Legal Adviser to the Ministry of External Affairs of India, and Senator Michael O'Kennedy, former Minister for Foreign Affairs of Ireland.

3. Essentially, the right to self-determination is the right of peoples to determine their own destiny. In particular, the right allows a people to choose its own political status and to determine its own form of economic, cultural and social development, free of outside interference. This interpretation of the right to self-determination corresponds to the United Nations instruments and resolutions, including article 1 common to the two International Covenants on Human Rights. The exercise of this right can result in a variety of different outcomes ranging from political independence to forms of autonomy or association to full integration within a State. The importance lies in the right of choice, so that the outcome of a people's choice should not affect the existence of the right to make a choice. In practice, the possible outcome of an exercise of self-determination will often determine the attitude of Governments towards the actual claim by a people or nation. Nevertheless, the right to self-determination is recognized in international law as a right of process (not of outcome) belonging to peoples and not to States or Governments.

4. Understood in this way, the right to self-determination remains an ongoing choice of the people as to their governance, and their economic, social and cultural development. It is a constant entitlement. The concepts of self-determination and democracy are closely related, since both emphasize the right of people to choose the form and identity of their Government. However, democracy as this is practised according to the Western model does not necessarily satisfy the requirements for the implementation of self-determination. Where democracy is defined as the rule of the majority and the people claiming the right to self-determination constitute a numerical minority in the State in question, a democratic system does not necessarily respond to the needs of the minority peoples.

5. Pursuant to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, the realization of the right to self-determination "shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples ... and thus possessed of a Government representing the whole people belonging to the territory without distinction" as to race, creed or colour. The same principle was adopted by consensus and was included in the final Declaration of the World Conference on Human Rights held in Vienna in June 1993. The apparent tension between the principles of territorial integrity of States and of self-determination of peoples is, therefore, resolved on the basis of the conduct of the States in question. States, or more accurately their Governments, that do represent the interests

of all the peoples within their borders, can invoke the principle of territorial integrity. Those that do not represent the interests of their constituent peoples but, instead, oppress them and violate their rights, cannot invoke that principle in response to a claim for self-determination. In cases of colonial or alien domination and of occupation of territory the dominated or occupied people always has the right to exercise self-determination.

6. The conference referred to above concluded that East Timor, Tibet and Western Sahara each possess the right to self-determination. Each of the cases, though different, is a strong case of a people which has and continues to be denied its right to self-determination. In the case of Tibet, it was agreed that Tibetans are indisputably a people: they possess a distinct language, religion, culture, traditions and customs, a history as a separate State and a well-defined territory. It was demonstrated that policies have been instituted, including population transfer, intended to destroy the Tibetans as a distinct people with their own national and cultural heritage. This constitutes a violation of the right to self-determination. This has also been recognized by the United Nations in a number of resolutions (e.g. 1723 (XVI) of 20 December 1961 and 2079 (XX) of 18 December 1965 and resolution 1991/10 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities).

7. East Timor and Western Sahara both were subjected to "salt-water" colonialism by Portugal and Spain, respectively, before being occupied by Indonesia and Morocco. Both territories are on the agenda of the United Nations Decolonization Committee. In both cases the United Nations has recognized its responsibility and has been involved in attempts to negotiate an end to the occupation and an implementation of the right to self-determination.

8. Even though the United Nations has been seized with respect to all three cases, it has been ineffective in securing the right of the respective peoples to self-determination. The United Nations Commission on Human Rights should analyse the causes of this ineffectiveness as well as the consequences this has on the lack of respect for other fundamental human rights of the people concerned.

9. The Indonesian invasion and occupation of East Timor violated two fundamental norms of international law: it deprived East Timor of its right to self-determination and it constituted an act of aggression. The General Assembly and the Security Council have both recognized the right to self-determination of the Timorese people and have called upon Indonesia to withdraw its forces from the territory. Professor Richard Falk (Albert Milbank Professor of International Law, Princeton University) reminded the conference that Indonesia has, in fact, accepted the application of the principle of self-determination to the territory of East Timor. It has even entered into negotiations about its application with Portugal in United Nations-sponsored negotiations.

10. The same applies to Western Sahara: the Moroccan invasion and occupation of Western Sahara deprived the Saharawi people of its right to self-determination and also constituted an act of aggression. The

General Assembly recognized the inalienable right to self-determination of Western Sahara in 1965, and decided upon a referendum as the appropriate method to implement this right. In 1979, it recognized the Polisario Front as the accepted representative of the people of Western Sahara. The General Assembly has repeatedly reaffirmed the responsibility of the United Nations to ameliorate this situation and has offered the people of Western Sahara an international guarantee for the respect of their will. This position has been reinforced by the International Court of Justice which has reaffirmed, through an Advisory Opinion (3 January 1975), that the people of Western Sahara possess the requisite factors to invoke their right to self-determination. The United Nations has obtained the agreement of the parties on the method for the implementation of the right to self-determination: a referendum. This has, however, been undermined by an active policy of population transfer.

11. In the cases of both East Timor and Western Sahara, the occupying Powers have prevented the full decolonization of the territories in question. A parallel can be drawn also with the situation of Tibet, except that this country was never colonized before 1951. In all three cases, international law has been and continues to be violated. International law imposes the duty on States not to recognize situations created in violation of international law and to act to uphold that law. This many States members of the United Nations have failed to do, thus undermining the international system of rule of law, instead succumbing to the short-term advantages of political or economic expediency.

12. This inability or refusal of States, including major Powers, to insist upon compliance with international law, including the right to self-determination, in the cases of East Timor, Tibet and Western Sahara has deepened the suffering to which the Timorese, Saharawi and Tibetan people have been subjected.

13. In each of these cases, the leaders of the occupied peoples have proposed a process of accommodation and reconciliation which provides for a phased approach to implementation of self-determination. International law provides not only for the exercise of self-determination as an outcome, but also provides the basis for a process for its realization which can lead, over time, to the desired outcome. It is noted that this sense of realism is reflected in the Timorese Peace Initiative (1992), the Five Point Peace Plan of H.H. the Dalai Lama (1989) and the 1991 Peace Plan for Western Sahara.

14. The United Nations Commission on Human Rights can encourage and endorse efforts being made towards a peaceful resolution of conflicts originating out of these claims to self-determination. It can call on the Secretary-General to offer his good offices or to intensify his efforts where his good offices have not led to the desired result. For the Commission to maintain silence on these three cases is an impermissible abdication of its responsibilities in the field of human rights, in particular in respect to agenda item 7, dealing with the human right of self-determination.

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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by the Transnational Radical Party, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[7 March 1997]

1. When reporting on the human rights situation of prisoners in Tibet, one has to at the same time investigate the violation of the freedom of opinion and expression. Including those Tibetans placed under detention in 1996, there are as many as 1,018 political prisoners, many of whom have already spent years of their life in custody and still today remain behind bars. This is a twofold increase over the number of political prisoners reported in 1994 and a sixfold increase over the number reported in 1991. The majority of these prisoners are monks and many of them are children under the age of 18.

2. Virtually all of these Tibetans were imprisoned, tortured or killed for peacefully exercising their rights to speak freely and to hold opinions, including speaking or demonstrating in support of the Tibetans' right to self-determination or in support of the Dalai Lama, printing or distributing leaflets or posters, or speaking to foreigners.

3. China's denial of freedom of opinion in Tibet has existed since 1949, but it has intensified since 1987 when Tibetans began publicly demonstrating against Chinese occupation. Since April 1996, violations have been further

reinforced under the aegis of the national "Strike hard campaign". Within Tibet, the Chinese authorities have focused on "splittist" individuals, in an attempt to stifle the voices calling for independence and respect for fundamental freedoms. Implementation of sub-campaigns, such as the "Patriotic re-education" campaign in Tibet has led to widespread arrests and expulsions of monks and nuns who have refused to be "re-educated" along Chinese communist lines.

4. In 1996, the Tibetan Centre for Human Rights and Democracy recorded 204 known cases of arrests of Tibetans for exercising their freedom of expression and assembly. Arrests have resulted from peaceful actions, ranging from the possession of a picture of the Dalai Lama or the Tibetan national flag, to saying "Free Tibet" to a non-violent demonstration of just a few minutes' duration.

5. All of the cases represent a whole range of human rights violations - arbitrary arrests, years of denial of due process, torture and ill-treatment, and frequently the arbitrary extension of prison sentences for the exercise of human rights while in detention.

6. Officials have acted with impunity in perpetrating a variety of inhuman torture methods against Tibetan political prisoners. In 1996 eight reports of Tibetans dying as a result of police torture and ill-treatment were reported. Three of these were deaths in custody.

International and national law, and United Nations action

7. Article 19 of the Universal Declaration of Human Rights establishes freedom of opinion and expression as a fundamental human right. Article 19 of the Universal Declaration also protects the right to "receive and impart information ... regardless of frontiers". Article 20 establishes the right to freedom of peaceful assembly. These rights, among others in the Universal Declaration, have become binding as customary international law.

8. Moreover, China has acknowledged to the United Nations that it adheres to the principles set out in the Universal Declaration. Article 35 of China's Constitution also guarantees freedom of expression, publication, demonstration and assembly.

9. Year after year, United Nations human rights bodies have reported on and criticized the People's Republic of China for its range of human rights violations. In 1996, the Committee against Torture, while scrutinizing China's periodic report, concluded that "the special environment which exists in Tibet continues to create conditions that have resulted in alleged maltreatment and even death of persons held in police custody and in prisons". Also the Special Rapporteur on the question of torture reports that many persons detained for political reasons were convicted of offences partly or wholly on the basis of "confessions" that had been obtained through the application of torture during interrogation.

Cases

10. A 28-year-old Tibetan nun, Phuntsog Nyidron, is currently the longest serving known female political prisoner in Tibet. She has been in prison since 14 October 1989, when she peacefully led a demonstration against the Chinese occupation of Tibet which lasted only a few minutes. According to testimonies, Phuntsog was kicked and beaten during the arrest and later given electric shocks, and suspended from the ceiling for at least 15 minutes. Her nine-year sentence was increased by eight years in 1993 when she and other nuns sang pro-independence songs in Drapchi prison.

11. In August 1996, Yudrung, a young Tibetan artist was detained in Gutsa for 58 days and later found in a traumatized condition in a public toilet. Yudrung was arrested in connection with his portraits of the Dalai Lama and the Tibetan National Flag and, after being severely tortured in prison, is presumed to have been released on 27 October, the same day he was found.

12. Kalsang Thutop, a 49-year-old monk, died on 5 July 1996. He was serving an 18-year sentence for his involvement in the 1989 Lhasa demonstrations. The day he died he had been interrogated for two hours in Drapchi prison. When returning from this interrogation he was no longer able to speak. During his burial, clear signs of severe torture were reportedly observed.

Conclusion

13. We appreciate the fact that some members of the Commission on Human Rights have repeatedly taken up the human rights situation in Tibet at its previous sessions. The violations in Tibet have however not decreased. On the contrary, evidence shows a strong increase in human rights violations in the last years. The Transnational Radical Party calls upon all the members of the Commission on Human Rights to increase their efforts to end the critical situation in Tibet. China should be made accountable for its repeated failure to end policies which have deprived the Tibetan people of their human rights and fundamental freedoms. A first step would be for the Commission on Human Rights to adopt a strong resolution on China at this session.

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STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Written statement submitted by the Transnational Radical Party, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[7 March 1997]

1. An increasing number of countries have decided to abide by the constraints imposed on the application of the death penalty by international conventions. In effect, the four documents of international law whose contents are openly abolitionist have already been ratified by nearly 50 States that are now obliged not to apply the death penalty. The aforementioned documents are: the well-known Second Protocol to the International Covenant on Civil and Political Rights, the Sixth Protocol to the European Convention on Human Rights, the Optional Protocol to the American Convention on Human Rights for the abolition of the death penalty and the American Convention on Human Rights. The United Nations has surely contributed to reaching this outcome.

2. In order to strengthen this process and to promote the concept that restricting and abolishing the death penalty must be the core of the development of human rights regulations, both in the United Nations system and in international law, the Transnational Radical Party, through its international campaign for the abolition of the death penalty, called "Hands off Cain" (a citizens' and parliamentarians' league for the abolition of the death penalty worldwide by the year 2000), has decided to support the presentation and the discussion in the Commission on Human Rights of a resolution on the death penalty.

3. Particularly, with its campaign for the abolition of the death penalty "Hands off Cain", the Transnational Radical Party thinks that, just as slavery and torture were abolished a century ago, today, at the dawn of the third millennium, it is important to acknowledge a new principle of juridical civilization, i.e., that no democratic State can dispose of its citizens' lives. The acceptance of such a principle would be an important contribution to the development of an international law that exclusively and genuinely follows universal principles, instead of being based on the supremacy of one culture over others or on multifarious compromises.

4. So far, the abolitionist standings of the States have been affirmed within the United Nations through the acknowledgement of the right to life of everyone. This is the wording of article 3 of the Universal Declaration of Human Rights, article 6 of the International Covenant on Civil and Political Rights and articles 6 and 37 of the Convention on the Rights of the Child. However, these regulations do not specifically prohibit the death penalty, since they are a sort of compromise reached by the States that at that time thought it better not to specifically ban the death penalty. Nonetheless, through General Assembly resolution 2857 (XXVI) and, later on, through its resolution 44/128 of 15 December 1989, in which the Second Optional Protocol to the Covenant on Civil and Political Rights was adopted and opened to signature, the United Nations expressed its abolitionist commitment. In fact, article 2 specifically prohibits the application of the death penalty to the signatory States.

5. Later on, through a series of resolutions, the Economic and Social Council emphasized the importance of gradually reducing capital crimes in order to reach the definitive abolition of the death penalty (resolutions 1574 (L), 1745 (LIV), 1930 (LVIII), 1984/50, 1985/33, 1990/29 and 1990/51).

6. In such a framework, the United Nations has expressed a precise abolitionist orientation in the new acts that have been adopted, but it is also worth recalling the 1982 General Comment of the Human Rights Committee on article 6 of the International Covenant on Civil and Political Rights that strengthened the reading of this article from an abolitionist point of view, thus helping shape the course of further United Nations activities.

7. Afterwards, other documents were adopted, imposing an absolute ban on the application of the death penalty, leaving out of consideration references to the right to life and having binding legal effect for all States. These documents are the statutes approved by the United Nations Security Council for the establishment of ad hoc tribunals to judge war crimes committed in Rwanda and the former Yugoslavia. (Statute of the Tribunal for the Former Yugoslavia 827 (1993), annex, art. 24; Statute of the International Tribunal for Rwanda 955 (1994), annex, art. 23). These acts, being Security Council resolutions, are binding for all States; nonetheless they create a great contradiction since, countries like China, the Russian Federation and the United States of America have excluded the death penalty from international law against the horrific crimes committed during the wars that tore apart the former Yugoslavia and Rwanda, but they go on applying it within their borders to absolutely less serious crimes. However, this is not an isolated example. In fact, the statute for a permanent international criminal court, now being

examined by the Committee charged with preparing the founding conference of such an international jurisdiction, excludes the death penalty as well (A/49/10, chap. II.B, art. 47).

8. It is important to remember that the debates taking place within United Nations bodies on the absence of the death penalty from the statutes of these tribunals show that this argument is, by now, irrefutable. On the one hand, it is too early to affirm the existence of a universal rule forbidding the application of the death penalty; on the other hand, the regulations excluding or limiting it are widely accepted, which makes it possible to talk of "soft law". These developments, which occurred within the United Nations, have surely affected the policies of States with regard to the death penalty. In fact, as the report of the Secretary-General (E/CN.15/1996/19) on the death penalty shows, since 1989, as many as 25 countries have abolished the death penalty, 23 of them for all crimes, including those committed in wartime.

9. From the point of view of international law, the acceptance of international abolitionist regulations makes it possible for us to affirm that: recent resolutions of the United Nations General Assembly and other international bodies confirm that the regulations earlier included in international conventions, limiting the application of the death penalty to the most serious crimes and excluding it in the case of minors, pregnant women and mentally retarded people, have now acquired the status of customary laws having binding effect for all the States that have undertaken to abide by them.

10. The Transnational Radical Party, with its campaign "Hands off Cain", underlines the importance of the United Nations continuing to call for a moratorium on capital executions as an intermediary and resolute step towards achieving the abolition of the death penalty by the end of this millennium. Recent data show that the moratorium can be a political and juridical tool allowing States to take their own time and verify the uselessness of the death penalty. From this point of view, South Africa is an emblematic example. At the end of the 1980s, this country was literally torn apart by civil war and recorded one of the highest rates of application of the death penalty. After a decision to impose a five-year moratorium on capital executions had been taken, the country eventually abolished the death penalty in 1995, as established in its new Constitution.

11. The United Nations has also chosen the right tool to support abolitionist policies; a moratorium. In 1968, the Commission on Human Rights invited States to abide by a six-month moratorium before carrying out a capital sentence (E/4475); (E/CN.4/972 paras. 134-136, 162-164). This resolution was later approved by the General Assembly with some amendments (resolution 2393 (XXIII); A/PV.1727).

12. This attempt was repeated in 1994, when, during the forty-ninth session of the General Assembly, a resolution requesting a universal moratorium on capital punishment was presented as an intermediate step to reaching and affirming, by the year 2000, that no democratic State should execute its own citizens. The resolution was rejected by only eight votes after Singapore, a retentive State, presented an amendment, which was approved, requesting that any mention of international rights and the United Nations system be removed, thus effectively defeating the purpose of the resolution.

13. The Transnational Radical Party, through its campaign "Hands off Cain" had undertaken many actions in favour of the moratorium during the months prior to the discussion in the General Assembly; a petition to the United Nations collected thousands of signatures all around the world. Some days before the debate, the New York Times published an advertisement on the initiative, and, in the crucial moments, the government delegations which had gathered in New York received many faxes with messages from all over the world. "A revolutionary event in the history of the United Nations": that was the impression of the Secretary-General, Dr. Boutros Boutros Ghali, on the mobilization of citizens and parliamentarians who participated, in that way, in the United Nations General Assembly.

14. After the 1994 vote in the General Assembly, the Transnational Radical Party started a campaign called "Hands off Cain, 10 countries, 100 cities, 100,000 signatures at the United Nations to stop the death penalty", aimed at reproposing the resolution to the United Nations with a wider range of sponsoring States, as well as supporting NGOs and other institutions.

15. On the side of the international institutions, we reported the approval of the moratorium resolution by the parliament of Latin America, in December 1995; on 27 September 1996 the Joint Assembly of the African, Caribbean and Pacific Group (ACP) and the 15 European Union (EU), approved a resolution, in which the member States (65 ACP countries, as well as 15 EU member States) asked the other members of the Lomé Convention still applying the death penalty to impose a three-year moratorium.

16. Even more interesting is the policy adopted by the European Council, which in the past few years, has vetoed the admission of Eastern European countries unless they have abolished the death penalty, or prior to the immediate introduction of a moratorium on executions. Hence, it is worth recalling recommendation No. 1302 (1996) and resolution No. 1097 (1996) of the European Council Parliamentary Assembly on the abolition of the death penalty in Europe. It is important to note that after the adoption of a resolution on 28 January 1997 on the death penalty in the Russia Federation and Ukraine, President Yeltsin decided to abolish the death penalty.

17. The European Parliament has also actively worked on the front of the abolition of the death penalty, with its resolutions of 18 June 1981 on the abolition of the death penalty within the European Community; of 17 January 1986 on the abolition of the death penalty and the access to the Sixth Protocol to the European Convention on Human Rights and the resolution on the death penalty of 12 March 1992, which affirmed, for the first time, the right of citizens to freedom from State execution. In accordance with this approach, the European Parliament recently adopted a resolution inviting member States to insist that the United Nations Commission on Human Rights support a resolution calling for a universal moratorium on capital punishment.

18. Taking into account these data and remembering the experience of the vote in the General Assembly in 1994, the Transnational Radical Party with its

campaign "Hands off Cain" asks the Commission to adopt, as an intermediary step, a resolution on a moratorium on capital executions. In order for the problem of the death penalty to be fully part of human rights, the Commission must set up monitoring action on this matter. Thus, it would be hoped that the Secretary-General would submit a yearly report to the Commission on decisions taken with regard to the death penalty, analysing the policies and the reasons underlying the decisions of the various States, international organizations and the non-governmental organizations.